PIJSSL

Praxis International Journal of Social Science and Literature

A Peer-reviewed Multidisciplinary e-Journal with SJIR 2025 = 6.034 & ISSN: 2581-6675

Vol. 09, No. 05 (May 2026) **DOI:** 10.51879/PIJSSL/090502

Email: editor.pijssl@gmail.com | **Website:** www.pijssl.com

OPEN ACCESS

Constitutional Amendments and Democratic Erosion in Bangladesh

Samra Hossain

Ph.D Scholar, Department South and South East Asian Studies, Calcutta University, Kolkata

Email: aiyatrocks@gmail.com

Abstract

This paper examines how constitutional amendments have contributed to democratic erosion in Bangladesh, with particular focus on the Fifteenth and Sixteenth Amendments. It argues that these amendments were not merely legal or procedural reforms, but part of a broader process through which incumbent governments used constitutional change to consolidate power and weaken institutional accountability. The Fifteenth Amendment abolished the caretaker government system, a mechanism widely regarded as essential for ensuring credible and impartial elections in a deeply polarized political environment. Its removal significantly reduced public confidence in electoral neutrality and strengthened the ruling party's control over the electoral process. The Sixteenth Amendment extended this pattern into the judicial sphere by transferring the power to remove Supreme Court judges from the Supreme Judicial Council to Parliament, thereby threatening judicial independence in a context where the legislature was overwhelmingly dominated by the executive. Drawing on the literature on democratic backsliding, competitive authoritarianism, electoral manipulation, and constitutional retrogression, this paper situates Bangladesh within a wider comparative framework of contemporary democratic decline. It shows that democratic erosion in Bangladesh has taken place not through the abrupt suspension of constitutional order, but through the formal use of constitutional mechanisms to undermine elections, weaken the separation of powers, and limit effective institutional checks on executive authority. The paper concludes that constitutional amendment in Bangladesh has increasingly functioned as a tool of authoritarian consolidation rather than democratic reform.

Keywords: *Democratic backsliding, Constitutional retrogression, Caretaker government Judicial independence, Electoral manipulation, Separation of powers, Competitive authoritarianism*

Introduction

Constitutional amendment is generally understood as a legitimate mechanism through which states adapt their legal and institutional structures to changing political, social, and historical circumstances. In democratic systems, amendments are expected to strengthen constitutional governance, improve accountability, and respond to new challenges while preserving the core principles of representative rule. In Bangladesh, however, constitutional amendment has often been deeply entangled with partisan political interests. Rather than functioning solely as an instrument of reform, constitutional change has frequently served as a means through which incumbent governments reshape institutions in order to consolidate power. This raises an important question at the centre of contemporary constitutional and political debate: when does constitutional reform cease to be democratic adaptation and become a vehicle of democratic erosion?

This is an open access article licensed under https://creativecommons.org/licenses/by-nc-nd/4.0

This question is particularly relevant in the case of the Fifteenth Amendment of 2011 and the Sixteenth Amendment of 2014. These two amendments are among the most consequential constitutional developments in recent Bangladeshi politics because they altered the balance between government authority and institutional accountability. The Fifteenth Amendment abolished the caretaker government system, which had previously overseen parliamentary elections and was widely seen as an important mechanism for ensuring neutrality in a highly polarized political environment. Although the caretaker system was not free from controversy, its existence had provided at least a limited level of confidence among opposition parties and voters that elections could be conducted without direct control by the ruling party. Its removal therefore transformed the electoral framework by allowing incumbent governments to supervise elections in which they were themselves contestants.

The Sixteenth Amendment extended this pattern into the judicial sphere. By transferring the power to remove Supreme Court judges from the Supreme Judicial Council to Parliament, the amendment raised serious concerns about judicial independence and the separation of powers. In a context where Parliament was overwhelmingly dominated by the ruling party, the shift did not appear to enhance accountability in any neutral sense. Instead, it risked exposing judges to partisan pressure and weakening the ability of the judiciary to act as an effective check on executive and legislative power. The later annulment of the amendment by the Supreme Court, and the controversy surrounding Chief Justice Surendra Kumar Sinha's resignation, further intensified debates over the condition of judicial autonomy in Bangladesh.

This paper examines the Fifteenth and Sixteenth Amendments as part of a broader pattern of democratic backsliding in Bangladesh. Drawing on the concepts of electoral manipulation, competitive authoritarianism, and constitutional retrogression, it argues that these amendments were not merely isolated legal reforms but components of a wider process through which formal constitutional mechanisms were used to weaken democratic institutions from within. By focusing on elections and the judiciary, the paper explores how constitutional law can be employed not only to organize democratic government but also to undermine the institutional safeguards that make democracy meaningful. In doing so, it situates Bangladesh within the larger comparative literature on contemporary democratic erosion.

Review of Literature

The literature on democratic backsliding increasingly argues that democratic erosion often occurs through formal constitutional and legal change rather than through sudden authoritarian rupture. In this scholarship, elected governments do not necessarily abolish democratic institutions outright; instead, they reshape them in ways that preserve constitutional form while weakening accountability, competition, and institutional restraint. Bangladesh is a useful case for this literature because major constitutional changes in the 2010s altered both the electoral arena and the judiciary in ways widely seen as consolidating executive power. The Fifteenth Amendment of 2011 and the Sixteenth Amendment of 2014 have therefore become central to scholarly debates on constitutional retrogression in Bangladesh. (Human Rights Asia)[1]

One major strand of the literature focuses on elections and institutional manipulation. Schedler (2002) argues that authoritarian-leaning regimes often keep elections in place while manipulating the rules under which those elections occur. Levitsky and Way (2002) similarly describe "competitive authoritarian" systems as regimes in which formal democratic institutions remain intact but incumbents enjoy such significant structural advantages that the opposition cannot compete on equal terms. These frameworks are especially relevant to Bangladesh after the abolition of the caretaker government system through the Fifteenth Amendment. Because the caretaker arrangement had been designed to supervise elections through a non-party interim mechanism, its removal shifted control of elections back to the sitting government. In the literature, this is often interpreted not simply as administrative reform, but as a reconfiguration of electoral rules in favour of incumbents. The resulting 2014 parliamentary election, which the Inter-Parliamentary Union records as the basis for the tenth parliament after a heavily disputed process, is frequently cited as evidence

that the amendment undermined electoral credibility rather than strengthening democratic continuity (Levitsky & Way, 2002; Schedler, 2002). (Journal of Democracy)[2]

A second body of scholarship examines how constitutional amendment can become a vehicle of democratic decline when one party dominates the legislature. Ginsburg and Huq (2018) describe this process as *Constitutional Retrogression*: the incremental use of lawful constitutional tools to weaken the institutional foundations of democracy. Their argument is particularly useful for analysing Bangladesh, where legal change occurred through parliamentary procedures rather than through open suspension of constitutional order. The literature suggests that the danger in such settings lies not in illegality, but in the use of legality itself as a means of entrenchment. Applied to Bangladesh, this perspective helps explain why the Fifteenth Amendment is widely treated as a turning point. It did not eliminate elections, but it altered the institutional conditions under which elections would be administered, thereby weakening a mechanism that had been regarded as important for opposition confidence and electoral legitimacy (Ginsburg & Huq, 2018). (University of Chicago Press[3]

The literature on judicial independence provides the main framework for understanding the Sixteenth Amendment. That amendment altered Article 96 of the Constitution by restoring Parliament's role in the removal of Supreme Court judges, replacing the earlier Supreme Judicial Council mechanism. Comparative scholarship on courts and regimes consistently finds that judicial independence depends heavily on institutional protections against political retaliation. Where judges may be removed, disciplined, or threatened by elected officials, courts are less likely to act as effective constraints on government power. In the Bangladeshi case, scholars have therefore treated the Sixteenth Amendment as more than a technical constitutional revision. Rather, it is commonly read as an attempt to subject the judiciary to a legislature dominated by the ruling party, thereby weakening separation of powers and constitutional review. The Bangladesh Supreme Court's later decision declaring the Sixteenth Amendment unconstitutional reinforced this interpretation by defending judicial independence as part of the constitutional structure itself. (Bangladesh Legal Information System)[4]

The post-judgment aftermath also features prominently in the literature because it demonstrates that judicial pressure may operate informally as well as formally. Following the Supreme Court's ruling, Chief Justice Surendra Kumar Sinha resigned amid intense political controversy. Later reporting on Sinha's memoir described his claim that he had been pressured to rule in favour of the government before the appellate judgment. Whether interpreted as direct reprisal or as a broader climate of intimidation, this episode has been used in the literature to show that constitutional conflict in Bangladesh cannot be understood only through legal texts. Formal judicial independence may be undermined by extra-legal political pressure, especially where executive dominance is already entrenched (Al Jazeera, 2018).[5]

Taken together, the scholarship treats the Fifteenth and Sixteenth Amendments as connected rather than isolated developments. The first changed the rules of electoral competition by abolishing a mechanism associated with neutral election administration; the second threatened judicial autonomy by increasing legislative control over the tenure of judges. Read through the lenses of electoral manipulation, competitive authoritarianism, and constitutional retrogression, these amendments illustrate how constitutional law can be used to hollow out democracy from within. The Bangladeshi case therefore contributes to a broader comparative insight: modern democratic erosion frequently proceeds through amendments, statutes, and institutional redesigns that are formally lawful but substantively corrosive of democratic accountability. (University of Chicago Press)[3]

Methodology

This study uses a qualitative, literature-based methodology to examine how constitutional amendments contributed to democratic erosion in Bangladesh. It relies on document analysis of primary sources, including the Constitution of Bangladesh, the Fifteenth and Sixteenth Amendments, and the Supreme Court judgment on the Sixteenth Amendment, alongside secondary sources such as books, journal articles, and legal

commentaries. A case study approach is used to analyse the two amendments as key examples of institutional change. The study is guided by the concepts of democratic backsliding, competitive authoritarianism, and constitutional retrogression to interpret how constitutional reform weakened electoral accountability and judicial independence.

Constitutional Amendments and Democratic Erosion in Bangladesh

Since independence, the Constitution of Bangladesh has been amended repeatedly, often in ways closely tied to the political interests of incumbent governments. As Abdul Wahab argues, successive regimes have sought to preserve power by politicising key state institutions, including the administration, judiciary, Public Service Commission, Election Commission, universities, media, local government, and even the military. Within this broader trajectory, the Fifteenth and Sixteenth Amendments are especially significant because they altered the constitutional balance in ways that weakened electoral accountability and judicial independence.

The Fifteenth Amendment, passed on 30 June 2011, marked a decisive turning point in Bangladesh's constitutional and political development. Passed by the Jatiyo Sangsad through a division vote of 291–1 while opposition parties were boycotting Parliament, the amendment abolished the caretaker government (CTG) system that had previously overseen general elections. Although the bill also contained proposals touching questions of religion and constitutional identity, including debates within the ruling alliance over Islam as the state religion and the place of religion-based politics, its most consequential effect lay in the removal of the CTG mechanism. Islam remained the state religion, and the constitutional invocation "Bismillahi-Ar-Rahmanir-Rahim" was retained, illustrating the enduring political sensitivity of religious symbolism within Bangladesh's constitutional order.

The abolition of the caretaker system had far-reaching consequences. For many observers, the CTG had functioned as one of the few institutional arrangements capable of mitigating partisan distrust in the electoral process. Its removal therefore did not simply amend an administrative procedure; it transformed the rules of political competition by allowing the incumbent government to oversee elections in which it was itself a contestant. This change significantly reduced confidence in the possibility of neutral electoral administration and intensified already deep antagonism between the ruling party and the opposition.

This development can be understood through the comparative literature on authoritarian adaptation. Schedler's notion of the menu of manipulation is especially relevant here: electoral authoritarian regimes do not necessarily cancel elections, but instead redesign institutions in ways that preserve the formal appearance of democracy while systematically advantaging incumbents. The Fifteenth Amendment fits this pattern. Rather than suspending elections, it ensured that elections would take place under rules structurally favourable to the ruling party. In Levitsky and Way's terms, this represents a classic feature of competitive authoritarianism, where democratic institutions formally remain in place, but the playing field becomes so uneven that meaningful contestation is severely compromised. The consequences became visible in the 2014 general election, the first held under the post-CTG framework, when 153 seats went uncontested and the main opposition forces boycotted the poll. The result was not merely an electoral victory for the incumbent, but a profound deterioration in the legitimacy of the electoral process itself.

The parliamentary context within which the Fifteenth Amendment was passed is also crucial. As Table 1 demonstrates, the ruling Awami League enjoyed overwhelming dominance in both the ninth and tenth parliaments. In the ninth parliament (2009–2014), the ruling party held 230 seats, while the opposition controlled only 30. In the tenth parliament (2014–2019), the ruling party held 234 seats, with the opposition reduced to 27. Such parliamentary asymmetry meant that constitutional amendment was not constrained by effective legislative resistance. The passage of the Fifteenth Amendment in a near-opposition-free chamber therefore reflects not broad constitutional consensus, but the absence of institutional counterweights capable of checking executive ambition. In this respect, Bangladesh's experience is consistent with what Ginsburg and Huq describe as constitutional retrogression: the incremental use of formally lawful mechanisms by elected governments to erode the institutions that sustain constitutional democracy.

If the Fifteenth Amendment reconfigured the electoral arena to favour the incumbent, the Sixteenth Amendment extended the same logic into the judicial sphere. By amending Article 96 of the Constitution, it transferred the power to remove Supreme Court judges from the Supreme Judicial Council to Parliament. Although framed as a restoration of parliamentary authority, the amendment effectively subjected judges to the will of a legislature dominated by the ruling party. Given the central constitutional role of the judiciary in reviewing legislation and upholding constitutional supremacy, this change posed a direct threat to the separation of powers.

Table 1: Bangladesh Parliament, 2009-2019

	Tenure	System Of Government	Ruling Party	The Strength of The Ruling Party	The Size of the Opposition	No. of Amendment Passed	Significant Amendments
9th Parliament	Jan 25 2009- Jan 28 2014.	Parliamentary	BAL	230	30	1	15th Amendment
10th Parliament	Jan 29 2014- Jan 29, 2019	Parliamentary	BAL	234	27	1	16th Amendment

Source: Compiled from various sources. Tenure of parliament, drawn from Bangladesh Parliament, www.parliament.gov.bd/index.php/en/ about-parliament/tenure-of-parliament; Bangladesh election results are gathered from Bangladesh Election Commission, http://www.ecs.gov.bd/.

The list of constitutional amendments, 1st through 15th, is drawn from Banglapedia, http://en.banglapedia.org/index.php?title=Constitutional_ Amendments; For the 16th Amendment, see https://www.thedailystar.net/frontpage/hc-scraps-16th-Amendment-1219480.

The data presented in Table 1 reveals a structural condition that is essential to understanding how both the Fifteenth and Sixteenth Amendments were possible at all. During the ninth parliament, the ruling Awami League commanded 230 seats against an opposition of merely 30 — a near-supermajority that rendered legislative resistance virtually impossible. This disproportion deepened further in the tenth parliament, where the ruling party held 234 seats while the opposition was reduced to just 27. It is within this context of overwhelming parliamentary dominance that both amendments must be understood. The Fifteenth Amendment was passed by a division vote of 291-1 while opposition parties were boycotting parliament entirely — a margin that reflects not democratic consensus but the absence of any meaningful counterweight to executive will. This pattern is consistent with what Ginsburg and Huq (2018) term 'constitutional retrogression' — the process by which democratically elected governments use their legislative majorities to incrementally dismantle the very institutional constraints designed to check their power. The supermajority held by the Awami League did not merely facilitate these amendments; it made the constitutional safeguards against executive overreach structurally unenforceable. In this sense, the parliamentary arithmetic documented in Table 1 is not incidental background data — it is the enabling condition of democratic backsliding in Bangladesh." (*Ginsburg, T., & Huq, A. (2018).* How to Save a Constitutional Democracy. *University of Chicago Press*.)

The 16th amendment of the Constitution of Bangladesh mainly deals with Article 96, i.e., the impeachment right, through which the Government shifted the power of impeachment from the Supreme Judicial Council to the Parliament. However, this amendment jeopardizes the concept of separation of power and, thus, the notion of independence of the judiciary in different ways. The Judiciary plays a role in securing the supremacy of the Constitution, i.e., enforceability of the supremacy of the Constitution.[1] Thus, the judiciary must determine whether a law enacted by the Parliament is incompatible with the Constitution or not.[2] Therefore, the judiciary and Parliament could have disagreed and conflicting relationships in different cases.

The power granted to Parliament to remove judges can create psychological pressure on them, as any ruling that deems a law inappropriate might lead to Parliament initiating actions against the judge. This constitutional amendment imposes a chilling effect on the judiciary, acting as a form of prior restraint that restricts judges' freedom of expression and discretion when making legal decisions. This phenomenon arises when individuals are discouraged from engaging in certain actions due to the threat of potential consequences.

As a result, judges may hesitate to issue harsh rulings against political leaders or members of Parliament, who make up the legislative majority, out of fear of negative repercussions. This undermines judicial independence, as it prevents judges from operating with full impartiality and autonomy. Moreover, the 16th Amendment of the Constitution lacks clear definitions and fails to effectively address the process of removing judges. Terms like "misbehaviour" and "incapacity" are vague and open to broad interpretation, allowing Parliament to misuse its authority in defining these terms . The problem was not only institutional but behavioural. A judiciary whose tenure can be jeopardised by Parliament is unlikely to act with full confidence against the political branches. The power of removal creates what may be described as a chilling effect, discouraging judges from issuing decisions that could provoke retaliation from the legislative majority or the executive that controls it. This risk was intensified by the amendment's vague terminology, particularly its references to "misbehaviour" and "incapacity," which were left insufficiently defined. Such ambiguity opened the door to discretionary or politically motivated interpretations of judicial conduct, thereby increasing the vulnerability of judges to partisan pressure.

In this sense, the Sixteenth Amendment was not merely a technical revision to constitutional procedure; it was part of a broader attempt to subordinate judicial autonomy to parliamentary supremacy. The significance of this move becomes clearer when placed in the wider context of democratic backsliding. Where executive dominance is already entrenched in the legislature, transferring disciplinary control over judges to Parliament does not enhance accountability; rather, it risks converting constitutional oversight into an instrument of political control.

The subsequent annulment of the Sixteenth Amendment by the Supreme Court did not end this conflict. On the contrary, the aftermath of the judgment provided powerful evidence of the political pressures surrounding judicial independence in Bangladesh. Following the Court's decision, Chief Justice Surendra Kumar Sinha faced intense pressure and later resigned. In a memoir published after leaving office, he alleged that the government had orchestrated a campaign against him, including corruption accusations, in retaliation for the Court's ruling. Whether read as a direct act of reprisal or as a broader episode of institutional intimidation, the Sinha case illustrates how constitutional conflict in Bangladesh can rapidly move beyond legal argument into personal and political coercion. The episode sent a clear message to the judiciary: resistance to executive preference could carry serious professional and personal consequences.

Taken together, the Fifteenth and Sixteenth Amendments reveal a broader pattern of democratic erosion through constitutional means. The former undermined electoral neutrality by abolishing a mechanism designed to secure cross-partisan confidence in elections; the latter threatened judicial independence by placing disciplinary authority over judges in the hands of a partisan legislature. Both amendments were made possible by overwhelming parliamentary dominance, and both exemplify how constitutional change can be used not to deepen democracy, but to weaken the institutional restraints that make democratic government meaningful. In Bangladesh, therefore, constitutional amendment has functioned not only as a legal process of reform, but also as a political instrument through which incumbents have sought to consolidate power and marginalise accountability.

Conclusion

This study explores that the real challenge to free and fair national elections in Bangladesh is not constitutional or administrative but political. Political parties themselves create electoral problems in Bangladesh. Thus, to defeat the political crisis through the political institutionalization of responsibility and tolerance is very important for the country to run democracy. The Fifteenth and Sixteenth Amendments represent a coherent

and systematic project of constitutional reengineering, one designed not to overthrow democratic institutions but to hollow them out from within. The Fifteenth Amendment dismantled the caretaker government system — the one institutional mechanism that had lent credibility to Bangladesh's electoral process — replacing it with incumbent oversight of elections in which the ruling party was itself a contestant. The Sixteenth Amendment then extended this logic to the judiciary, transferring the power of judicial removal to a parliament so thoroughly dominated by a single party that the distinction between legislative will and executive preference had effectively collapsed. As Table 1 demonstrates, this was not achieved despite democratic procedures but through them — a supermajority so overwhelming that constitutional amendment became an instrument of entrenchment rather than reform. The forced resignation of Chief Justice Sinha confirmed what the text of these amendments had already made structurally inevitable: that in Bangladesh, institutional independence had been rendered contingent on political compliance. This trajectory is best understood through the framework of constitutional retrogression advanced by Ginsburg and Huq (2018), whereby democratically elected governments exploit the very legitimacy conferred by electoral victory to dismantle the checks that democracy requires to function. Bangladesh's experience between 2011 and 2017 thus stands as a cautionary case of how constitutional law, stripped of meaningful institutional constraints, can become the primary vehicle of authoritarian consolidation.

References

1. Al Jazeera. (2018, September 28). *Bangladesh: Ex-chief justice alleges he was forced to resign*.
2. Bari, M. E. (2021). The recent changes introduced to the method of removal of judges of the Supreme Court of Bangladesh & the consequent triumph of an all-powerful executive over the judiciary: Judicial independence in peril. *Cardozo International & Comparative Law Review*, 4(2), 653–696.
3. Constitution (Fifteenth Amendment) Act, 2011 (Bangladesh).
4. Constitution of the People's Republic of Bangladesh, art. 96.
5. Ginsburg, T., & Huq, A. Z. (2018). *How to save a constitutional democracy*. University of Chicago Press.
6. Haque, M. (2011). Revisiting the role of the president during caretaker government in ensuring credible free elections in Bangladesh. *Asian Journal of Comparative Law*, 6, 1–28. https://doi.org/10.1017/S2194607800000533
7. Helmke, G., & Rosenbluth, F. (2009). "Regimes and the rule of law: Judicial independence in comparative perspective." ("Helmke, Rosenbluth (2009), "Regimes and the Rule of Law: Judicial ...") *Annual Review of Political Science*, 12, 345–366. https://doi.org/10.1146/annurev.polisci.12.040907.132749
8. Islam, M. R. (2023). The history and politics of parliamentary judge removal in Bangladesh. ("Bangladesh University of Professionals | Md. Rabiul Islam") *Newcastle Law Review*, 16, 112–130.
9. Levitsky, S., & Way, L. A. (2002). The rise of competitive authoritarianism. *Journal of Democracy*, 13(2), 51–65. https://doi.org/10.1353/jod.2002.0026
10. Riaz, A. (2021). The pathway of democratic backsliding in Bangladesh. *Democratization*.
11. Schedler, A. (2002). The menu of manipulation. *Journal of Democracy*, 13(2), 36–50. https://doi.org/10.1353/jod.2002.0025
12. Schedler, A. (Ed.). (2006). *Electoral authoritarianism: The dynamics of unfree competition*. Lynne Rienner.
13. Simpser, A. (2013). *Why governments and parties manipulate elections: Theory, practice, and implications*. Cambridge University Press.

14. Supreme Court of Bangladesh. (2017). *Bangladesh v. Advocate Asaduzzaman Siddiqui, Civil Appeal No. 06 of 2017*. ("ADVOCATE ASAD UZZAMAN SIDDIQUI V. BANGLADESH: BANGLADESH'S ... - Manupatra")

[1] Anwar Hossain Chowdhury v. Bangladesh [1989] BLD (Spl) 1, 28.
[2] **Islam, Mahmudul.** *Constitutional Law of Bangladesh.* 2nd ed. Dhaka: Mullick Brothers, 2002
The Public and its Government (New Haven, CT: Yale University Press, 1930); Schwartz,
American Constitutional Law (Cambridge: Cambridge University Press, 1955) 286